

ARGUMENTS/REMARKS

This paper is submitted responsive to the official action mailed December 30, 2005. Reconsideration of the application is respectfully requested.

In the aforesaid action, the Examiner rejected all claims in the application as obvious based upon a combination of US Patent Number 6,434,403 to Ausems et al. (Ausems) in view of US Patent Number 5,963,624 to Pope (Pope).

Reconsideration of this rejection is again respectfully requested. Turning to the action, the Examiner concedes that: "Ausems et al. does not clearly teach communicating structural appliance with a server programmed to accept mobile device commands; communicating a mobile device with server; issuing mobile device commands from mobile device to server; converting mobile device commands to structural appliance commands; and issuing structural appliance commands from server to structural appliance". See Official Action mailed April 8, 2005, paragraph 3, lines 6-10. In light of this admitted failing in Ausems, it is not clear why Ausems is even included in this rejection. At most, Ausems apparently teaches a PDA and the desire to control some type of appliances. Virtually every method step of claim 1 is conceded by the Examiner to be missing from Ausems.

To complete his obviousness rejection, the Examiner relies upon Pope.

Pope teaches the use of a digital cordless telephone to control electrical appliances. Control commands are

carried from the cordless phone, by the voice data signal, to the base unit of the cordless phone, which can then generate an IR signal to control the desired appliance. It is respectfully submitted that (1) Pope is clearly non-analogous art, (2) the Examiner has not made a satisfactory *Prima Facie* case that a person skilled in the art would be motivated to combine the references as done by the Examiner, and (3) in fact a person skilled in the art would not be so motivated.

Pope is Non-Analogous Art

According to Section 2141.01(a) of the MPEP, the examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).

Applicant's field of endeavor is to provide control of structural appliances through cell and GSM network using a WAP phone, a server and a gateway.

Pope is clearly outside of this field of endeavor. Pope does not rely on any type of cell or GSM communication, and is intended to allow control of devices

from right within one's home, for example to mute the television when receiving a phone call. Obviously Pope is directed to a manifestly different field from that of the present invention, and is not in the field of Applicant's endeavor.

Pope is also not reasonably pertinent to the particular problem with which the inventor was concerned. The problem with which the present inventors were concerned is to allow remote control and access to appliance information to users such as technicians and appliance repairmen, as well as to allow home owners away from the home, etc., to control such appliances. Pope's disclosure, relying upon IR signals and power signal conditioning to control appliances, is clearly not reasonably related to the problem with which the inventors were concerned.

To reiterate, Pope is drawn to an in-home cordless phone which can also serve as a universal remote control. Clearly, Pope is non-analogous art and the rejection asserted by the Examiner, relying upon Pope, is in error and should be withdrawn.

There is no Prima Facie case of obviousness

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art

reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The present rejection fails all three criteria.

These is no suggestion or motivation to combine the reference teachings

The Examiner has submitted that it would be desirable to combine Ausems with Pope "to allow control information to be multiplexed with the voice data and to reduce transmission error". It is not clear how combination of the IR cordless phone technology of Pope with the PDA technology of Ausems would accomplish either of these purported results asserted by the Examiner, and obviously such goals would need to be reasonably attainable in order to serve as motivation for this combination of art.

Ausems and Pope are directed to two very different systems with no common link. Pope does not disclose any technology which would be considered useful with the PDA technology disclosed by Ausems.

There is no reasonable expectation of success

Second, it is not at all clear that a skilled artisan would have any expectation of success in making the combination constructed by the Examiner. It is completely unclear exactly how and where the IR technology of Pope

would be functionally incorporated into a system such as Ausems with any success at all, and/or that such a combination would even be functional.

It is submitted that the motivation to combine Pope with Ausems is not readily apparent.

The prior art references, even when combined, do not teach or suggest all the claim limitations

The Examiner has argued that the base unit of Pope falls within the scope of the claim term server in the present application. This is not true. A server as called for in the claims has meaning to a person skilled in the art to which the invention pertains, and such person would not consider the cordless phone base of Pope to be a server. Ausems combined with Pope clearly do not arrive at the subject matter of the present claims, and reconsideration of the rejection of claim 1 is respectfully requested.

In connection with claim 2, this claim calls for the server to be communicated with the structural appliance through a gateway. The Examiner has relied upon the same base unit of Pope as also being the gateway. It is submitted that it is a stretch to even consider the base unit of Pope to be a server as called for by the claims, let alone for this base unit to also be a gateway. Pope's base unit is merely a universal IR remote control apparatus, and it is submitted that this structure is clearly not within the scope of the meaning of the terms

server or gateway as understood by the person of ordinary skill in the art.

In connection with claims 3-4, the Examiner states that a teaching of this subject matter is found at column 4, lines 55-57. This portion of Pope clearly does not teach sending of structural appliance information from the server back to the mobile device. This excerpt of Pope teaches using the TV remote to store a signal in the phone (Figure 2 of Pope is the handset 50). Nothing in Pope is being sent from the server (base unit, for sake of argument) to the mobile device (handset).

Claim 4 calls for a series of detailed steps regarding the communication of information from the appliance back through the gateway and server to the mobile communication device. None of this subject matter is even remotely suggested by Ausems or Pope.

In connection with claims 7 and 8, these claims call for the mobile device to be a web enabled device, and for the mobile device to be communicated with the server utilizing wireless application protocol. Ausems does not even teach the server, and Pope apparently is considered to teach a server in the form of the base unit. There is absolutely no reason nor motivation why anyone would combine the references to communicate the cordless phone of Pope with the base unit via wireless application protocol.

The Examiner takes official notice in connection with claims 9 and 10 that global satellite network and global computer network are well known in the art. While this may be true, it is a point which need not be argued at this

time since whether known or not, there is absolutely no reason why a person of skill in the art would modify the cordless phone of Pope to arrive at the claimed subject matter. The device or system of Pope is used to control appliances in the home when the phone user receives a phone call. One stated use is so that televisions or stereos can be muted when a call is received. The Digital and IR communication disclosed by Pope is perfectly well suited to that purpose, and there is absolutely no motivation nor reasoning as to why a person of skill in the art would incorporate internet and satellite communications into a system such as Pope.

In connection with dependent claim 18, this claim calls for the additional subject matter that the mobile device is operated by an energy provider, and that the appliance controlled is an appliance of a customer of the energy provider (i.e., is powered by energy from the energy provider). The Examiner dismisses this subject matter as obvious design choice, and states that no problem is solved, etc., by this subject matter. In fact, this aspect of the invention advantageously allows an energy provider to control power consumption, for example during times of peak demand, or impaired supply, as several examples. This is set forth in the specification.

There is absolutely no hint or suggestion as to use of the systems of Ausems or Pope in this manner. Ausems makes no mention of it, and teaches a system with a localized receiver for each device which would not function well if attempted to be used in the manner claimed in method claim

18. Pope is drawn to a cordless phone and IR control of appliances within cordless phone range, i.e., within the house with the cordless phone. Clearly there would be no useful purpose to modify Pope to meet the subject matter of claim 18.

Based upon the foregoing, it is respectfully submitted that claims 1-19 are clearly patentable over the art of record. Reconsideration of the pending rejection is therefore earnestly solicited.

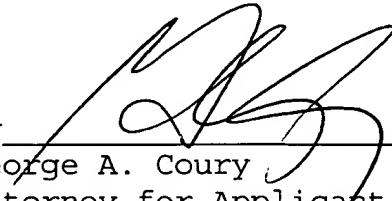
An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

Appln. No. 09/684,174
Resp. dated Mar. 30, 2006
Reply to OA of Dec. 30, 2005

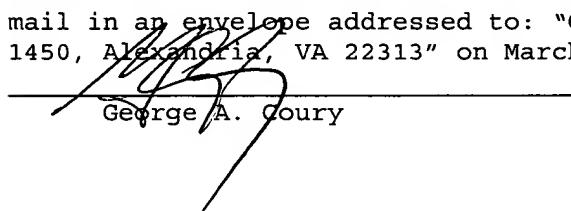
If any additional fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,
Mark Morelli et al.

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on March 30, 2006


George A. Coury